

AMENDED IN ASSEMBLY JUNE 12, 2007

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 71**

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**Introduced by Assembly Member Dymally**

December 4, 2006

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An act to add *and repeal* Sections 17053.101 and 23601 ~~to~~ of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

### LEGISLATIVE COUNSEL'S DIGEST

AB 71, as amended, Dymally. Income and corporation tax credits: employee health insurance.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill, *for taxable years beginning on or after January 1, 201\_, and before January 1, 201\_*, would authorize a credit against those taxes to a qualified small employer, as defined, in an amount equal to ~~the applicable percentage, as defined,~~ 25% of the amount paid by the employer during the taxable year for qualified employee health insurance expenses, as defined.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. This act shall be known, and may be cited, as the  
2     “Small Business Health Care Tax Credit Act”.

3     SEC. 2. *Section 17053.101 is added to the Revenue and*  
4     *Taxation Code, to read:*

5     17053.101. (a) *For each taxable year beginning on or after*  
6     *January 1, 201\_, and before January 1, 201\_, there shall be*  
7     *allowed to a qualified small employer a credit against the “net*  
8     *tax,” as defined by Section 17039, in an amount equal to 25 percent*  
9     *of the amount paid by the qualified small employer during the*  
10    *taxable year for qualified health insurance expenses for qualified*  
11    *employees.*

12    (b) *For purposes of this section:*

13    (1) (A) *“Qualified small employer” means any small employer*  
14    *that does both of the following:*

15    (i) *Offers health insurance coverage to all qualified employees*  
16    *of the employer, after any applicable waiting period as defined in*  
17    *Section 9801(b)(4) of the Internal Revenue Code.*

18    (ii) *Pays at least 50 percent of the cost of health insurance*  
19    *coverage for each qualified employee.*

20    (B) *“Small employer” means, with respect to any taxable year,*  
21    *any employer that employed an average of more than one-but*  
22    *fewer than 11-full-time and full-time-equivalent employees during*  
23    *the taxable year. For purposes of this subparagraph, all persons*  
24    *treated as a single employer under Section 52(a) or (b) of the*  
25    *Internal Revenue Code or Section 414(m) or (o) of the Internal*  
26    *Revenue Code shall be treated as one employer.*

27    (2) (A) *“Qualified health insurance expenses” means any*  
28    *amount paid or incurred by a qualified small employer for health*  
29    *insurance coverage, not to exceed five thousand dollars (\$5,000)*  
30    *for each qualified employee during the taxable year, to the extent*  
31    *that amount is attributable to health insurance coverage provided*  
32    *to any employee and the employee’s spouse, if applicable, during*  
33    *the period that the employee is a qualified employee.*

34    (B) *No amount paid or incurred for health insurance coverage*  
35    *pursuant to a salary reduction arrangement shall be taken into*  
36    *account under subparagraph (A).*

37    (C) *“Health insurance coverage” has the same meaning given*  
38    *that term by Section 9832(b)(1) of the Internal Revenue Code.*

1 (D) *In any case where the qualified small employer provides*  
2 *health insurance coverage to a qualified employee's dependents*  
3 *in addition to health insurance coverage to the qualified employee*  
4 *and the qualified employee's spouse, if applicable, the amount*  
5 *treated as qualified health insurance expenses under subparagraph*  
6 *(A) shall not include the incremental amounts paid by the qualified*  
7 *small employer for health insurance coverage for the qualified*  
8 *employee's dependents. The Franchise Tax Board may prescribe,*  
9 *by regulation, any necessary rules for making the computation*  
10 *described in the preceding sentence.*

11 (3) (A) *"Qualified employee" means an employee of a qualified*  
12 *small employer who, with respect to any calendar year, performed*  
13 *more than 50 percent of their services for the qualified small*  
14 *employer for compensation within this state and has received not*  
15 *more than fifty thousand dollars (\$50,000) of total compensation*  
16 *from the qualified small employer during the taxable year.*

17 (B) *"Qualified employee" does not include an employee that is*  
18 *provided health insurance coverage under any of the following:*

19 (i) *A health plan of the employee's spouse.*

20 (ii) *Any other individual or group health plan.*

21 (iii) *Title XVIII, XIX, or XXI of the Social Security Act.*

22 (iv) *Chapter 17 of Title 38 of the United States Code.*

23 (v) *Chapter 55 of Title 10 of the United States Code.*

24 (vi) *Chapter 89 of Title 5 of the United States Code.*

25 (vii) *Any other law.*

26 (C) *"Qualified employee" shall not include an employee within*  
27 *the meaning of Section 401(c)(1) of the Internal Revenue Code,*  
28 *relating to self-employed individuals treated as employees.*

29 (D) *"Employee" includes a leased employee within the meaning*  
30 *of Section 414(n) of the Internal Revenue Code, relating to*  
31 *employee leasing.*

32 (E) *"Compensation" means amounts described in Section*  
33 *3401(a) of the Internal Revenue Code.*

34 (c) *For each taxable year beginning on or after January 1, 201\_,*  
35 *the compensation amount set forth in subparagraph (A) of*  
36 *paragraph (3) of subdivision (b) shall be adjusted to equal the*  
37 *income limits provided for under the Medi-Cal program or the*  
38 *Healthy Families Program pursuant to paragraph (6) of*  
39 *subdivision (a) of Section 12693.70 of the Insurance Code.*

1 (d) No deduction or other credit shall be allowed, as otherwise  
2 provided in this part, for any costs paid or incurred for the taxable  
3 year for which a credit is allowed under this section.

4 (e) In the case where the credit allowed by this section exceeds  
5 the “net tax,” the excess may be carried over to reduce the “net  
6 tax” for the succeeding seven years.

7 (f) The Franchise Tax Board may prescribe those regulations  
8 as may be necessary or appropriate to carry out the purposes of  
9 this section.

10 (g) This section shall remain in effect until December 31, 201\_,  
11 and as of that date is repealed.

12 SEC. 3. Section 23601 is added to the Revenue and Taxation  
13 Code, to read:

14 23601. (a) For each taxable year beginning on or after  
15 January 1, 201\_, and before January 1, 201\_, there shall be  
16 allowed to a qualified small employer a credit against their “tax,”  
17 as defined by Section 23036, in an amount equal to 25 percent of  
18 the amount paid by the qualified small employer during the taxable  
19 year for qualified health insurance expenses for qualified  
20 employees.

21 (b) For purposes of this section:

22 (1) (A) “Qualified small employer” means any small employer  
23 that does both of the following:

24 (i) Offers health insurance coverage to all qualified employees  
25 of the employer, after any applicable waiting period as defined in  
26 Section 9801(b)(4) of the Internal Revenue Code.

27 (ii) Pays at least 50 percent of the cost of health insurance  
28 coverage for each qualified employee.

29 (B) “Small employer” means, with respect to any taxable year,  
30 any employer that employed an average of more than one-but  
31 fewer than 11- full-time and full-time-equivalent employees during  
32 the taxable year. For purposes of this subparagraph, all persons  
33 treated as a single employer under Section 52(a) or (b) of the  
34 Internal Revenue Code or Section 414(m) or (o) of the Internal  
35 Revenue Code shall be treated as one employer.

36 (2) (A) “Qualified health insurance expenses” means any  
37 amount paid or incurred by a qualified small employer for health  
38 insurance coverage, not to exceed five thousand dollars (\$5,000)  
39 for each qualified employee during the taxable year, to the extent  
40 that amount is attributable to health insurance coverage provided

1 to any employee and the employee's spouse, if applicable, during  
2 the period that the employee is a qualified employee.

3 (B) No amount paid or incurred for health insurance coverage  
4 pursuant to a salary reduction arrangement shall be taken into  
5 account under subparagraph (A).

6 (C) "Health insurance coverage" has the same meaning given  
7 that term by Section 9832(b)(1) of the Internal Revenue Code.

8 (D) In any case where the qualified small employer provides  
9 health insurance coverage to a qualified employee's dependents  
10 in addition to health insurance coverage to the qualified employee  
11 and the qualified employee's spouse, if applicable, the amount  
12 treated as qualified health insurance expenses under subparagraph  
13 (A) shall not include the incremental amounts paid by the qualified  
14 small employer for health insurance coverage for the qualified  
15 employee's dependents. The Franchise Tax Board may prescribe,  
16 by regulation, any necessary rules for making the computation  
17 described in the preceding sentence.

18 (3) (A) "Qualified employee" means an employee of a qualified  
19 small employer who, with respect to any calendar year, performed  
20 more than 50 percent of their services for the qualified small  
21 employer for compensation within this state and has received not  
22 more than fifty thousand dollars (\$50,000) of total compensation  
23 from the qualified small employer during the taxable year.

24 (B) "Qualified employee" does not include an employee that is  
25 provided health insurance coverage under any of the following:

- 26 (i) A health plan of the employee's spouse.
- 27 (ii) Any other individual or group health plan.
- 28 (iii) Title XVIII, XIX, or XXI of the Social Security Act.
- 29 (iv) Chapter 17 of Title 38 of the United States Code.
- 30 (v) Chapter 55 of Title 10 of the United States Code.
- 31 (vi) Chapter 89 of Title 5 of the United States Code.
- 32 (vii) Any other law.

33 (C) "Qualified employee" shall not include an employee within  
34 the meaning of Section 401(c)(1) of the Internal Revenue Code,  
35 relating to self-employed individuals treated as employees.

36 (D) "Employee" includes a leased employee within the meaning  
37 of Section 414(n) of the Internal Revenue Code, relating to  
38 employee leasing.

39 (E) "Compensation" means amounts described in Section  
40 3401(a) of the Internal Revenue Code.

(c) For each taxable year beginning on or after January 1, 201\_, the compensation amount set forth in subparagraph (A) of paragraph (3) of subdivision (b) shall be adjusted to equal the income limits provided for under the Medi-Cal program or the Healthy Families Program pursuant to paragraph (6) of subdivision (a) of Section 12693.70 of the Insurance Code.

(d) No deduction or other credit shall be allowed, as otherwise provided in this part, for any costs paid or incurred for the taxable year for which a credit is allowed under this section.

(e) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" for the succeeding seven years.

(f) The Franchise Tax Board may prescribe those regulations as may be necessary or appropriate to carry out the purposes of this section.

(g) This section shall remain in effect until December 31, 201\_, and as of that date is repealed.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

SEC. 2. ~~Section 17053.101 is added to the Revenue and Taxation Code, to read:~~

~~17053.101. (a) There shall be allowed to a qualified small employer a credit against the "net tax," as defined by Section 17039, in an amount equal to the applicable percentage of the amount paid by the employer during the taxable year for qualified employee health insurance expenses.~~

~~(b) For purposes of subdivision (a), the applicable percentage shall be:~~

~~(1) Fifty percent in the case of an employer with less than 10 qualified employees.~~

~~(2) Twenty-five percent in the case of an employer with more than nine but less than 25 qualified employees.~~

~~(3) Twenty percent in the case of an employer with more than 24 but less than 50 qualified employees.~~

~~(c) The amount of qualified employee health insurance expenses taken into account under subdivision (a) with respect to any qualified employee for any taxable year shall not exceed:~~

~~(1) Four thousand dollars (\$4,000) for self-only coverage.~~

~~(2) Ten thousand dollars (\$10,000) for family coverage.~~

~~(d) For purposes of this section:~~

1     ~~(1) (A) “Qualified small employer” means any small employer~~  
2 ~~that does both of the following:~~

3     ~~(i) Provides eligibility for health insurance coverage, after any~~  
4 ~~waiting period as defined in Section 9801(b)(4) of the Internal~~  
5 ~~Revenue Code, to all qualified employees of the employer.~~

6     ~~(ii) Pays at least 50 percent of the cost of that coverage for each~~  
7 ~~qualified employee.~~

8     ~~(B) (i) “Small employer” means, with respect to any taxable~~  
9 ~~year, any employer if both of the following apply:~~

10     ~~(I) The aggregate gross assets of the employer during the~~  
11 ~~preceding three taxable years do not exceed five million dollars~~  
12 ~~(\$5,000,000).~~

13     ~~(II) The employer employed an average of more than one but~~  
14 ~~less than 50 qualified employees on business days during the~~  
15 ~~preceding taxable year.~~

16     ~~(ii) For purposes of subclause (I) of clause (i) “aggregate gross~~  
17 ~~assets” shall have the meaning given that term by Section~~  
18 ~~1202(d)(2) of the Internal Revenue Code.~~

19     ~~(iii) For purposes of subclause (II) of clause (i) both of the~~  
20 ~~following shall apply:~~

21     ~~(I) A preceding taxable year may be taken into account only if~~  
22 ~~the person operated as an employer throughout that year.~~

23     ~~(II) In the case of a person that did not operate as an employer~~  
24 ~~throughout the preceding taxable year, the determination of whether~~  
25 ~~the person is a qualified small employer shall be based on the~~  
26 ~~average number of employees that it is reasonably expected that~~  
27 ~~person will employ on business days in the current taxable year.~~

28     ~~(iv) All persons treated as a single employer under subsection~~  
29 ~~(a) or (b) of Section 52 of the Internal Revenue Code or subsection~~  
30 ~~(m) or (o) of Section 414 of the Internal Revenue Code shall be~~  
31 ~~treated as one person for purposes of this subparagraph.~~

32     ~~(v) The Franchise Tax Board may prescribe rules and regulations~~  
33 ~~that provide for references in this subparagraph to a small employer~~  
34 ~~to be treated as including references to predecessors of the small~~  
35 ~~employer.~~

36     ~~(2) (A) “Qualified employee health insurance expenses” means~~  
37 ~~any amount paid by an employer for health insurance coverage to~~  
38 ~~the extent that amount is attributable to coverage provided to any~~  
39 ~~employee while the employee is a qualified employee.~~

1     ~~(B) No amount paid or incurred for health insurance coverage~~  
2 ~~pursuant to a salary reduction arrangement shall be taken into~~  
3 ~~account under subparagraph (A).~~

4     ~~(C) “Health insurance coverage” has the meaning given that~~  
5 ~~term by Section 9832(b)(1) of the Internal Revenue Code.~~

6     ~~(3) (A) “Qualified employee” means an employee of a qualified~~  
7 ~~small employer who, with respect to any period, is not provided~~  
8 ~~health insurance coverage under any of the following:~~

9     ~~(i) A health plan of the employee’s spouse.~~

10    ~~(ii) Title XVIII, XIX, or XXI of the Social Security Act.~~

11    ~~(iii) Chapter 17 of Title 38 of the United States Code.~~

12    ~~(iv) Chapter 55 of Title 10 of the United States Code.~~

13    ~~(v) Chapter 89 of Title 5 of the United States Code.~~

14    ~~(vi) Any other law.~~

15    ~~(B) (i) “Employee” means any individual, with respect to any~~  
16 ~~calendar year, who is reasonably expected to receive not more than~~  
17 ~~fifty thousand dollars (\$50,000) of compensation from the qualified~~  
18 ~~small employer during that year.~~

19    ~~(ii) “Employee” shall not include an employee within the~~  
20 ~~meaning of Section 401(c)(1) of the Internal Revenue Code.~~

21    ~~(iii) “Employee” includes a leased employee within the meaning~~  
22 ~~of Section 414(n) of the Internal Revenue Code.~~

23    ~~(C) “Compensation” means amounts described in Section~~  
24 ~~6051(a)(3) of the Internal Revenue Code.~~

25    ~~(D) (i) In the case of each taxable year beginning on or January~~  
26 ~~1, 2008, the fifty thousand dollar (\$50,000) amount in clause (i)~~  
27 ~~of subparagraph (B) shall be increased by an amount equal to fifty~~  
28 ~~thousand dollars (\$50,000) multiplied by the cost-of-living~~  
29 ~~adjustment determined under Section 1(f)(3) of the Internal~~  
30 ~~Revenue Code for the calendar year in which the taxable year~~  
31 ~~begins, determined by substituting “calendar year 2006” for~~  
32 ~~“calendar year 1992” in subparagraph (B) of Section 1(f)(3).~~

33    ~~(ii) If any amount as adjusted under clause (i) is not a multiple~~  
34 ~~of one thousand dollars (\$1,000), that amount shall be rounded to~~  
35 ~~the next lowest multiple of one thousand dollars (\$1,000).~~

36    ~~(4) Subdivision (a) shall not apply to a qualified small employer~~  
37 ~~for any period unless at all times during that period health insurance~~  
38 ~~coverage is available to all qualified employees of the employer~~  
39 ~~under similar terms.~~



1 ~~(e) No deduction or credit under any other provision of this part~~  
2 ~~shall be allowed with respect to qualified employee health~~  
3 ~~insurance expenses taken into account under this section.~~

4 ~~(f) In this case where the credit allowed by this section exceeds~~  
5 ~~the “net tax,” the excess may be carried over to reduce the “net~~  
6 ~~tax” in the following year, and succeeding years if necessary, until~~  
7 ~~the credit is exhausted.~~

8 ~~SEC. 3.—Section 23601 is added to the Revenue and Taxation~~  
9 ~~Code, to read:~~

10 ~~23601. (a) There shall be allowed to a qualified small employer~~  
11 ~~a credit against their “tax,” as defined by Section 23036, in an~~  
12 ~~amount equal to the applicable percentage of the amount paid by~~  
13 ~~the employer during the taxable year for qualified employee health~~  
14 ~~insurance expenses.~~

15 ~~(b) For purposes of subdivision (a), the applicable percentage~~  
16 ~~shall be:~~

17 ~~(1) Fifty percent in the case of an employer with less than 10~~  
18 ~~qualified employees.~~

19 ~~(2) Twenty-five percent in the case of an employer with more~~  
20 ~~than nine but less than 25 qualified employees.~~

21 ~~(3) Twenty percent in the case of an employer with more than~~  
22 ~~24 but less than 50 qualified employees.~~

23 ~~(e) The amount of qualified employee health insurance expenses~~  
24 ~~taken into account under subdivision (a) with respect to any~~  
25 ~~qualified employee for any taxable year shall not exceed:~~

26 ~~(1) Four thousand dollars (\$4,000) for self-only coverage.~~

27 ~~(2) Ten thousand dollars (\$10,000) for family coverage.~~

28 ~~(d) For purposes of this section:~~

29 ~~(1) (A) “Qualified small employer” means any small employer~~  
30 ~~that does both of the following:~~

31 ~~(i) Provides eligibility for health insurance coverage, after any~~  
32 ~~waiting period as defined in Section 9801(b)(4) of the Internal~~  
33 ~~Revenue Code, to all qualified employees of the employer.~~

34 ~~(ii) Pays at least 50 percent of the cost of that coverage for each~~  
35 ~~qualified employee.~~

36 ~~(B) (i) “Small employer” means, with respect to any taxable~~  
37 ~~year, any employer if both of the following apply:~~

38 ~~(I) The aggregate gross assets of the employer during the~~  
39 ~~preceding three taxable years do not exceed five million dollars~~  
40 ~~(\$5,000,000).~~

~~(H) The employer employed an average of more than one but less than 50 qualified employees on business days during the preceding taxable year.~~

~~(ii) For purposes of subclause (I) of clause (i) “aggregate gross assets” shall have meaning given that term by Section 1202(d)(2) of the Internal Revenue Code.~~

~~(iii) For purposes of subclause (II) of clause (i) both of the following shall apply:~~

~~(I) A preceding taxable year may be taken into account only if the employer was in existence throughout that year.~~

~~(II) In the case of an employer that was not in existence throughout the preceding taxable year, the determination of whether the employer is a qualified small employer shall be based on the average number of employees that it is reasonably expected that employer will employ on business days in the current taxable year.~~

~~(iv) All persons treated as a single employer under subsection (a) or (b) of Section 52 of the Internal Revenue Code or subsection (m) or (o) of Section 414 of the Internal Revenue Code shall be treated as one person for purposes of this subparagraph.~~

~~(v) The Franchise Tax Board may prescribe rules and regulations that provide for references in this subparagraph to a small employer to be treated as including references to predecessors of the small employer.~~

~~(2) (A) “Qualified employee health insurance expenses” means any amount paid by an employer for health insurance coverage to the extent that amount is attributable to coverage provided to any employee while the employee is a qualified employee.~~

~~(B) No amount paid or incurred for health insurance coverage pursuant to a salary reduction arrangement shall be taken into account under subparagraph (A).~~

~~(C) “Health insurance coverage” has the meaning given that term by Section 9832(b)(1) of the Internal Revenue Code.~~

~~(3) (A) “Qualified employee” means an employee of a qualified small employer who, with respect to any period, is not provided health insurance coverage under any of the following:~~

~~(i) A health plan of the employee’s spouse.~~

~~(ii) Title XVIII, XIX, or XXI of the Social Security Act.~~

~~(iii) Chapter 17 of Title 38 of the United States Code.~~

~~(iv) Chapter 55 of Title 10 of the United States Code.~~

~~(v) Chapter 89 of Title 5 of the United States Code.~~

1     ~~(vi) Any other law.~~

2     ~~(B) (i) "Employee" means any individual, with respect to any~~  
3 ~~calendar year, who is reasonably expected to receive not more than~~  
4 ~~fifty thousand dollars (\$50,000) of compensation from the qualified~~  
5 ~~small employer during that year.~~

6     ~~(ii) "Employee" shall not include an employee within the~~  
7 ~~meaning of Section 401(c)(1) of the Internal Revenue Code.~~

8     ~~(iii) "Employee" includes a leased employee within the meaning~~  
9 ~~of Section 414(n) of the Internal Revenue Code.~~

10    ~~(C) "Compensation" means amounts described in Section~~  
11 ~~6051(a)(3) of the Internal Revenue Code.~~

12    ~~(D) (i) In the case of each taxable year beginning on or after~~  
13 ~~January 1, 2008, the fifty thousand dollar (\$50,000) amount in~~  
14 ~~clause (i) of subparagraph (B) shall be increased by an amount~~  
15 ~~equal to fifty thousand dollars (\$50,000) multiplied by the~~  
16 ~~cost-of-living adjustment determined under Section 1(f)(3) of the~~  
17 ~~Internal Revenue Code for the calendar year in which the taxable~~  
18 ~~year begins, determined by substituting "calendar year 2006" for~~  
19 ~~"calendar year 1992" in subparagraph (B) of Section 1(f)(3).~~

20    ~~(ii) If any amount as adjusted under clause (i) is not a multiple~~  
21 ~~of one thousand dollars (\$1,000), that amount shall be rounded to~~  
22 ~~the next lowest multiple of one thousand dollars (\$1,000).~~

23    ~~(4) Subdivision (a) shall not apply to a qualified small employer~~  
24 ~~for any period unless at all times during that period health insurance~~  
25 ~~coverage is available to all qualified employees of the employer~~  
26 ~~under similar terms.~~

27    ~~(e) No deduction or credit under any other provision of this part~~  
28 ~~shall be allowed with respect to qualified employee health~~  
29 ~~insurance expenses taken into account under this section.~~

30    ~~(f) In the case where the credit allowed by this section exceeds~~  
31 ~~the "tax," the excess may be carried over to reduce the "tax" in~~  
32 ~~the following year, and succeeding years if necessary, until the~~  
33 ~~credit is exhausted.~~

34    ~~SEC. 4. This act provides for a tax levy within the meaning of~~  
35 ~~Article IV of the Constitution and shall go into immediate effect.~~